waterbody for a parameter of concern to be allocated to a discharger, if the necessity of the requested effluent limitation for the parameter of concern is not demonstrated to the full satisfaction of EQB.

(iii) Tier 3—Protection of ONRWs:

(A) EQB may designate a water as Class SA or SE (ONRWs) through a Resolution (PRWQSR Sections 2.1.1 and 2.2.1). Additionally, any interested party may nominate a specific water to be classified as an ONRW and the Governing Board of EQB will make the final determination. Classifying a water as an ONRW may result in the water being named in either Section 2.1.1 or 2.2.2 of the PRWQSR, which would require an amendment of the PRWQSR. The process for amending the PRWQSR, including public participation, is set forth in Section 8.6 of said regulation.

(B) The existing characteristics of Class SA and SE waters shall not be altered, except by natural causes, in order to preserve the existing natural phenomena.

(*1*) No point source discharge will be allowed in ONRWs.

(*2*) [Reserved]

(2) Activities Regulated by CWA Section 404 or Rivers and Harbors Action Section 10 Permits (Discharge of Dredged or Fill Material)

(i) EQB will only allow the discharge of dredged or fill material into a wetland if it can be demonstrated that such discharge will not have an unacceptable adverse impact either individually or in combination with other activities affecting the wetland of concern. The impacts to the water quality or the aquatic or other life in the wetland due to the discharge of dredged or fill material should be avoided, minimized and mitigated.

(ii) The discharge of dredged or fill material shall not be certified if there is a practicable alternative to the proposed discharge which would have less adverse impact on the recipient ecosystem, so long as the alternative does not have other more significant adverse environmental consequences. Activities which are not water dependent are presumed to have practicable alternatives, unless the applicant clearly demonstrates otherwise. No discharge of dredged and fill material shall be certified unless appropriate and practicable steps have been taken which minimize potential adverse impacts of the discharge on the recipient ecosystem. The discharge of dredged or fill material to ONRWs, however, shall be governed by paragraph (d)(1)(iii) of this section.

[72 FR 70524, Dec. 12, 2007]

§ 131.43 Florida.

(a) *Scope.* This section promulgates numeric criteria for nitrogen/phosphorus pollution for Class I and Class III waters in the State of Florida. This section also contains provisions for site-specific alternative criteria.

(b) *Definitions.*—(1) *Canal* means a trench, the bottom of which is normally covered by water with the upper edges of its two sides normally above water.

(2) *Clear, high-alkalinity lake* means a lake with long-term color less than or equal to 40 Platinum Cobalt Units (PCU) and Alkalinity greater than 20 mg/L $CaCO_3$.

(3) *Clear, low-alkalinity lake* means a lake with long-term color less than or equal to 40 PCU and alkalinity less than or equal to 20 mg/L $CaCO_3$.

(4) *Colored lake* means a lake with long-term color greater than 40 PCU.

(5) *Lake* means a slow-moving or standing body of freshwater that occupies an inland basin that is not a stream, spring, or wetland.

(6) *Lakes and flowing waters* means inland surface waters that have been classified as Class I (Potable Water Supplies) or Class III (Recreation, Propagation and Maintenance of a Healthy, Well-Balanced Population of Fish and Wildlife) water bodies pursuant to Rule 62–302.400, F.A.C., excluding wetlands, and are predominantly fresh waters.

(7) *Nutrient watershed region* means an area of the State, corresponding to drainage basins and differing geological conditions affecting nutrient levels, as delineated in Table 2.

(8) *Predominantly fresh waters* means surface waters in which the chloride concentration at the surface is less than 1,500 milligrams per liter.

(9) *South Florida Region* means those areas south of Lake Okeechobee and

the Caloosahatchee River watershed to the west of Lake Okeechobee and the St. Lucie watershed to the east of Lake Okeechobee.

(10) *Spring* means a site at which ground water flows through a natural opening in the ground onto the land surface or into a body of surface water.

(11) *State* means the State of Florida, whose transactions with the U.S. EPA in matters related to 40 CFR 131.43 are administered by the Secretary, or officials delegated such responsibility, of the Florida Department of Environmental Protection (FDEP), or successor agencies.

(12) *Stream* means a free-flowing, predominantly fresh surface water in a defined channel, and includes rivers, creeks, branches, canals, freshwater sloughs, and other similar water bodies.

(13) *Surface water* means water upon the surface of the earth, whether contained in bounds created naturally or artificially or diffused. Water from natural springs shall be classified as surface water when it exits from the spring onto the Earth's surface.

(c) *Criteria for Florida waters*—(1) *Criteria for lakes.* (i) The applicable criteria for chlorophyll *a*, total nitrogen (TN), and total phosphorus (TP) for lakes within each respective lake class are shown on Table 1.

TABLE 1

A	B	C	
Lake Color[a] and Alkalinity	Chl-a (mg/L)[b,*]	TN (mg/L)	TP (mg/L)
Colored Lakes[c]	0.020	1.27 [1.27–2.23]	0.05 [0.05–0.16]
Clear Lakes, High Alkalinity[d]	0.020	1.05 [1.05–1.91]	0.03 [0.03–0.09]
Clear Lakes, Low Alkalinity[e]	0.006	0.51 [0.51–0.93]	0.01 [0.01–0.03]

[a] Platinum Cobalt Units (PCU) assessed as true color free from turbidity.
[b] Chlorophyll *a* is defined as corrected chlorophyll, or the concentration of chlorophyll *a* remaining after the chlorophyll degradation product, phaeophytin *a*, has been subtracted from the uncorrected chlorophyll *a* measurement.
[c] Long-term Color > 40 Platinum Cobalt Units (PCU)
[d] Long-term Color ≤ 40 PCU and Alkalinity > 20 mg/L $CaCO_3$
[e] Long-term Color ≤ 40 PCU and Alkalinity ≤ 20 mg/L $CaCO_3$
[*] For a given waterbody, the annual geometric mean of chlorophyll *a*, TN or TP concentrations shall not exceed the applicable criterion concentration more than once in a three-year period.

(ii) Baseline criteria apply unless the State determines that modified criteria within the range indicated in Table 1 apply to a specific lake. Once established, modified criteria are the applicable criteria for all CWA purposes. The State may use this procedure one time for a specific lake in lieu of the site-specific alternative criteria procedure described in paragraph (e) of this section.

(A) The State may calculate modified criteria for TN and/or TP where the chlorophyll *a* criterion-magnitude as an annual geometric mean has not been exceeded and sufficient ambient monitoring data exist for chlorophyll *a* and TN and/or TP for at least the three immediately preceding years. Sufficient data include at least four measurements per year, with at least one measurement between May and September and one measurement between October and April each year.

(B) Modified criteria are calculated using data from years in which sufficient data are available to reflect maintenance of ambient conditions. Modified TN and/or TP criteria may not be greater than the higher value specified in the range of values in column C of Table 1 in paragraph (c)(1)(i) of this section. Modified TP and TN criteria may not exceed criteria applicable to streams to which a lake discharges.

(C) The State shall notify the public and maintain a record of these modified lake criteria, as well as a record supporting their derivation. The State shall notify EPA Region 4 and provide the supporting record within 30 days of

determination of modified lake criteria.

(2) *Criteria for streams.* (i) The applicable instream protection value (IPV) criteria for total nitrogen (TN) and total phosphorus (TP) for streams within each respective nutrient watershed region are shown on Table 2.

TABLE 2

Nutrient watershed region	Instream protection value criteria	
	TN (mg/L)*	TP (mg/L)*
Panhandle West [a]	0.67	0.06
Panhandle East [b]	1.03	0.18
North Central [c]	1.87	0.30
West Central [d]	1.65	0.49
Peninsula [e]	1.54	0.12

Watersheds pertaining to each Nutrient Watershed Region (NWR) were based principally on the NOAA coastal, estuarine, and fluvial drainage areas with modifications to the NOAA drainage areas in the West Central and Peninsula Regions that account for unique watershed geologies. For more detailed information on regionalization and which WBIDs pertain to each NWR, *see* the Technical Support Document.

[a] Panhandle West region includes: Perdido Bay Watershed, Pensacola Bay Watershed, Choctawhatchee Bay Watershed, St. Andrew Bay Watershed, and Apalachicola Bay Watershed.

[b] Panhandle East region includes: Apalachee Bay Watershed, and Econfina/Steinhatchee Coastal Drainage Area.

[c] North Central region includes the Suwannee River Watershed.

[d] West Central region includes: Peace, Myakka, Hillsborough, Alafia, Manatee, Little Manatee River Watersheds, and small, direct Tampa Bay tributary watersheds south of the Hillsborough River Watershed.

[e] Peninsula region includes: Waccasassa Coastal Drainage Area, Withlacoochee Coastal Drainage Area, Crystal/Pithlachascotee Coastal Drainage Area, small, direct Tampa Bay tributary watersheds west of the Hillsborough River Watershed, Sarasota Bay Watershed, small, direct Charlotte Harbor tributary watersheds south of the Peace River Watershed, Caloosahatchee River Watershed, Estero Bay Watershed, Kissimmee River/Lake Okeechobee Drainage Area, Loxahatchee/St. Lucie Watershed, Indian River Watershed, Daytona/St. Augustine Coastal Drainage Area, St. John's River Watershed, Nassau Coastal Drainage Area, and St. Mary's River Watershed.

* For a given waterbody, the annual geometric mean of TN or TP concentrations shall not exceed the applicable criterion concentration more than once in a three-year period.

(ii) *Criteria for protection of downstream lakes.* (A) The applicable criteria for streams that flow into downstream lakes include both the instream criteria for total phosphorus (TP) and total nitrogen (TN) in Table 2 in paragraph (c)(2)(i) and the downstream protection value (DPV) for TP and TN derived pursuant to the provisions of this paragraph. A DPV for stream tributaries (up to the point of reaching water bodies that are not streams as defined by this rule) that flow into a downstream lake is either the allowable concentration or the allowable loading of TN and/or TP applied at the point of entry into the lake. The applicable DPV for any stream shall be determined pursuant to paragraphs (c)(2)(ii)(B), (C), or (D) of this section. Contributions from stream tributaries upstream of the point of entry location must result in attainment of the DPV at the point of entry into the lake. If the DPV is not attained at the point of entry into the lake, then the collective set of streams in the upstream watershed does not attain the DPV, which is an applicable water quality criterion for the water segments in the upstream watershed. The State or EPA may establish additional DPVs at upstream tributary locations that are consistent with attaining the DPV at the point of entry into the lake. The State or EPA also have discretion to establish DPVs to account for a larger watershed area (*i.e.*, include waters beyond the point of reaching water bodies that are not streams as defined by this rule).

(B) In instances where available data and/or resources provide for use of a scientifically defensible and protective lake-specific application of the BATHTUB model, the State or EPA may derive the DPV for TN and/or TP from use of a lake-specific application of BATHTUB. The State and EPA are authorized to use a scientifically defensible technical model other than BATHTUB upon demonstration that use of another scientifically defensible technical model would protect the lake's designated uses and meet all applicable criteria for the lake. The State or EPA may designate the wasteload and/or load allocations from a TMDL established or approved by EPA as DPV(s) if the allocations from the TMDL will protect the lake's designated uses and meet all applicable criteria for the lake.

(C) When the State or EPA has not derived a DPV for a stream pursuant to paragraph (c)(2)(ii)(B) of this section, and where the downstream lake attains the applicable chlorophyll *a* criterion and the applicable TP and/or TN criteria, then the DPV for TN and/or TP is the associated ambient instream levels of TN and/or TP at the point of entry to the lake. Degradation in water quality from the DPV pursuant to this paragraph is to be considered nonattainment of the DPV, unless the DPV

is adjusted pursuant to paragraph (c)(2)(ii)(B) of this section.

(D) When the State or EPA has not derived a DPV pursuant to paragraph (c)(2)(ii)(B) of this section, and where the downstream lake does not attain applicable chlorophyll *a* criterion or the applicable TN and/or TP criteria, or has not been assessed, then the DPV for TN and/or TP is the applicable TN and/or TP criteria for the downstream lake.

(E) The State and EPA shall maintain a record of DPVs they derive based on the methods described in paragraphs (c)(2)(ii)(B) and (C) of this section, as well as a record supporting their derivation, and make such records available to the public. The State and EPA shall notify one another and provide a supporting record within 30 days of derivation of DPVs pursuant to paragraphs (c)(2)(ii)(B) or (C) of this section.

(3) *Criteria for springs.* The applicable nitrate+nitrite criterion is 0.35 mg/L as an annual geometric mean, not to be exceeded more than once in a three-year period.

(d) *Applicability.* (1) The criteria in paragraphs (c)(1) through (3) of this section apply to lakes and flowing waters, excluding flowing waters in the South Florida Region, and apply concurrently with other applicable water quality criteria, except when:

(i) State water quality standards contain criteria that are more stringent for a particular parameter and use;

(ii) The Regional Administrator determines that site-specific alternative criteria apply pursuant to the procedures in paragraph (e) of this section; or

(iii) The State adopts and EPA approves a water quality standards variance to the Class I or Class III designated use pursuant to §131.13 that meets the applicable provisions of State law and the applicable Federal regulations at §131.10.

(2) The criteria established in this section are subject to the State's general rules of applicability in the same way and to the same extent as are the other Federally-adopted and State-adopted numeric criteria when applied to the same use classifications.

(e) *Site-specific alternative criteria.* (1) The Regional Administrator may determine that site-specific alternative criteria shall apply to specific surface waters in lieu of the criteria established in paragraph (c) of this section. Any such determination shall be made consistent with §131.11.

(2) To receive consideration from the Regional Administrator for a determination of site-specific alternative criteria, an entity shall submit a request that includes proposed alternative numeric criteria and supporting rationale suitable to meet the needs for a technical support document pursuant to paragraph (e)(3) of this section. The entity shall provide the State a copy of all materials submitted to EPA, at the time of submittal to EPA, to facilitate the State providing comments to EPA. Site-specific alternative criteria may be based on one or more of the following approaches.

(i) Replicate the process for developing the stream criteria in paragraph (c)(2)(i) of this section.

(ii) Replicate the process for developing the lake criteria in paragraph (c)(1) of this section.

(iii) Conduct a biological, chemical, and physical assessment of waterbody conditions.

(iv) Use another scientifically defensible approach protective of the designated use.

(3) For any determination made under paragraph (e)(1) of this section, the Regional Administrator shall, prior to making such a determination, provide for public notice and comment on a proposed determination. For any such proposed determination, the Regional Administrator shall prepare and make available to the public a technical support document addressing the specific surface waters affected and the justification for each proposed determination. This document shall be made available to the public no later than the date of public notice issuance.

(4) The Regional Administrator shall maintain and make available to the public an updated list of determinations made pursuant to paragraph (e)(1) of this section as well as the technical support documents for each determination.

(5) Nothing in this paragraph (e) shall limit the Administrator's authority to modify the criteria in paragraph (c) of this section through rulemaking.

(f) *Effective date.* This section is effective on January 6, 2013, except for §131.43(e), which is effective February 4, 2011.

[75 FR 75805, Dec. 6, 2010, as amended at 77 FR 39951, July 6, 2012]

§131.44 Florida.

(a) *Phosphorus Rule.* (1) The document entitled ''Florida Administrative Code, Chapter 62–302, Surface Water Quality Standards, Section 62–302.540, Water Quality Standards for Phosphorus Within the Everglades Protection Area, Amended May 25, 2005, as annotated by EPA'' (Phosphorus Rule), is incorporated by reference as described in paragraph (a)(2). EPA is not incorporating the full text of this document, but correcting specified portions of the Phosphorus Rule as directed by a federal district court as indicated by the strikeout markings. The EPA is only incorporating by reference these crossed-out portions in the Florida Administrative Code 62–302.540. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a). Copies of the document may be inspected and obtained from the docket associated with this rulemaking (Docket Number EPA–HQ–OW–2011–0515) at *http://www.regulations.gov* electronically, at EPA's Water Docket (Address: 1301 Constitution Avenue NW., EPA West, Room B102, Washington, DC 20460, telephone number: 202–566–2426), at the National Archives and Records Administration (NARA), and finally, on the EPA Web site associated with this rulemaking at *http://water.epa.gov/lawsregs/rulesregs/floridaeverglades_index.cfm.* For information on the availability of this material at NARA, call 202–741–6030, or go to the following Web site *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* EPA adopts and identifies the portions of the document that have strikeout markings as portions of the Phosphorus Rule that EPA disapproved on December 3, 2009, and that are not applicable water quality standards for the purposes of the Clean Water Act. Remaining portions of the Phosphorus Rule that EPA had previously approved are applicable water quality standards for the purposes of the Clean Water Act but are not codified as federal regulations.

(2) In the Phosphorus Rule, strike the following text:

(i) The entire paragraph (1)(a);

(ii) The entire paragraph (1)(b)(2);

(iii) The entire paragraph and subparagraphs (2)(b), (2)(c), (2)(d), (2)(e), (2)(e)(1), (2)(e)(2) and 2(f);

(iv) The entire paragraph (2)(h);

(v) The entire paragraph (2)(l);

(vi) The entire paragraphs (3)(a) and (3)(b);

(vii) The entire paragraph 3(f);

(viii) The entire paragraph (3)(h);

(ix) In (4)(d)(2)(c), the sentence, ''If these limits are not met, no action shall be required, provided that the net improvement or hydropattern restoration provisions of subsection (6) below are met.'';

(x) The entire paragraph (5)(a);

(xi) The entire paragraph (5)(b)(2) and (5)(b)(3);

(xii) The entire paragraph (5)(d);

(xiii) The entire paragraph (6), including subparagraphs (6)(a), (6)(a)(1), (6)(a)(1)(a), (6)(a)(1)(b), (6)(a)(2), (6)(a)(3), (6)(a)(4), (6)(a)(5), (6)(b), (6)(b)(1), (6)(b)(2), (6)(b)(3), and (6)(c).

(b) *Amended Everglades Forever Act.* (1) The document entitled ''Florida Statute, Title 28, Natural Resources; Conservation, Reclamation, and Use, Section 373.4592, Everglades improvement and management, effective July 1, 2008, also known as the ''Everglades Forever Act,'' as annotated by EPA'' is incorporated by reference as described in paragraph (b)(2). The EPA is not incorporating the full text of this document, but correcting specified portions of the statute as directed by the court as indicated by the strike out markings. The EPA is only incorporating by reference these crossed-out portions in the Florida Statute, the ''Everglades Forever Act.'' The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a). Copies of the document may be inspected and obtained from the docket associated with this rulemaking (Docket Number EPA–HQ–OW–2011–0515) at *http://www.regulations.gov*